IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28/03/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 44701 of 2002 and Writ Petition No. 44714 of 2002
and
W.P.M.P.Nos. 65434, 65435, 65451, 65452/2002,
2522 to 2527/2003 and W.V.M.P.No. 313 and 314 of 2003.

Dinesh Dalmia,
12, Nawab Habibullah Avenue,
Second Street,
Chennai-600 006. .. Petitioner in both W.Ps.

-Vs-

1. The Commissioner of Police,
Detective Department,
Central Kolkata, Kolkata.

2. The Deputy Commissioner,
Detective Department,
Central Kolkata, Kolkata.

3. The Sub Inspector,
Detective Department,
Central Kolkata, Kolkata. .. Respondents in both W.Ps.

Petitions under Article 226 of the Constitution of India, for issuance of Writs of Certiorari, as stated therein.

For Petitioner in both Wps. : Mr. M. Ravindran, Senior counsel
for Mr. M. Vaidyanathan

For Respondents 1 to 3 : Mr. R. Shunmugasundaram,
Senior counsel for
Mr. S. Ravi and Mr.A. Saravanan

:COMMON ORDER

Dinesh Dalmia, promoter of DSQ Software Limited in Writ Petition No. 44701 of 2002, challenges FIR No. 476 dated 24-9-2002 on the file of the Sub Inspector, Detective Department, Central Kolkata, third respondent herein in so far as it conc erns him. In Writ Petition No. 44714 of 2002 the very same petitioner challenges FIR bearing No.300 dated 23-9-2001 on the file of the

same respondent.

2. The case of the petitioner in Writ Petition No. 44701 of 2002 is briefly stated hereunder:

According to him, M/s DSQ Software Limited was promoted by him at Chennai in the year 1993. The main object of the company was the preparation and export of software products. It was ranked one of the leading Software companies in the country. Its earnings were in foreign exchange. It has valuable customers, many of whom are Fortune 500 companies. In the year 2000, when the software market was at its peak, with a view to expand its activities further, it embarked on the purchase of overseas s oftware companies, one of which was Fortunate Technologies in which New Vision Investment Private Limited held a substantial number of shares. It allotted shares to New Vision India Private Limited for which it had the requisite permission from the conc erned authorities. However, due to technological flaw, the company, M/s DSQ Software Limited was directed by SEBI to cancel the allotment. Due to the default committed by some of the Brokers operating in the Calcutta Stock Exchange, the said Exchange a ppears to have suffered a loss. A complaint has been lodged by the Secretary of the Calcutta Stock Exchange Association Limited alleging that the Stock Exchange had been cheated to the tune of Rs.120 crores by the accused named in the complaint. While so, certain articles were published in Dailies including the Business Line issue of October 3, 2002 alleging that the petitioner was absconding. The said issue states that according to the 2nd respondent herein, he had masterminded the fund diversion wi th one Mr. Dinesh Kumar Singhania, the former Head of the Calcutta Stock Exchange. The allegation is malicious and unwarranted. To establish that the petitioner had nothing to do with the scam which is under investigation, the report of the Calcutta St ock Exchange Limited sent to the Deputy Director, Lok Sabha Secretariat is adequate proof. In view of the assertion made by the Calcutta Stock Exchange (in short "CSE") to the Joint Parliamentary Committee, the inclusion of petitioner's name and the all egations made by the 2nd respondent in his interviews to the various newspapers are unjustified and unwarranted. The only defect the shares lodged with the Stock Exchange suffer from is their subsequent cancellation by the Securities Exchange Board of I ndia (in short "SEBI"). The order of cancellation was communicated to the company M/s DSQ Software Limited at Chennai and hence the cause of action if any arises at Chennai though the FIR which is devoid of any allegation against him or the company has been lodged at Kolkata. This Court has ample jurisdiction to go into the veracity of the impugned FIR. There is no nexus between the petitioner and the other accused. The action of the respondents violates his rights under Articles 14, 19 (1) (g) and 21 of the Constitution of India. Similar averments have been made in the other writ petition where the petitioner challenges FIR bearing No.300 dated 23-9-2001 on the file of the third respondent.

3. Pursuant to the notice and interim order, the third respondent-Sub Inspector of Police, Detective Department, Central Calcutta, third respondent has filed a counter affidavit and also petition for vacation of the interim order. The cas e of the respondents as seen from the counter affidavit of the third respondent is briefly stated hereunder: Both the writ petitions are not

maintainable as this Court lacks territorial jurisdiction to grant the relief of quashing the FIR No. 476 dated 24-9-2002 filed before the Detective Department, Kolkata. The cause of action had wholly arisen within the City limits of Kolkata where the Calcutta Stock Exchange Association is situated. The case in FIR No. 476 has been registered on the complaint giv en by one Prasun Kumar Ray, Secretary of the Calcutta Stock Exchange Association Limited on 24-9-2002 for alleged offences under sections 120 (B), 420, 409, 467, 468, 471, 477-A IPC. During the period between February, 2001 and March, 2001, the writ pet itioner and other accused persons and others being bankers, share brokers and Directors of Calcutta Stock Exchange, had entered into a criminal conspiracy to cheat the Stock Exchange and its investors as well as the common members of public and in pursua nce thereof fraudulently withdrew a huge sum of Rs.120 crores and criminally misappropriated the same for their wrongful gain causing wrongful loss to Calcutta Stock Exchange and its investors by preparing and using forged and fabricated documents as gen uine. The petitioner in conspiracy with the other accused by indulging in circular trading artificially inflated the price of the shares of the DSQ Software Company Limited, DSQ Industries Limited and the shares of some other companies cheated small ti me investors of their hard earned money. They also cheated the Calcutta Stock Exchange Association to a tune of Rs.120 crores by deliberately making default in payment for the shares purchased by them in circular trading. A Joint Parliamentary Committe e was formed and a full enquiry was conducted by it. The report of the committee clearly found that the writ petitioner is criminally liable for his wrong doings culminating in a nation wide security scam having serious impact on the economy of the coun try. The Securities Exchange Board of India (SEBI) also conducted an enquiry and came to the conclusion that the writ petitioner is culpable.

4. It is further stated that the writ petitioner in conspiracy with the other accused, namely, Biyani Securities Private Limited and Harish Chandra Biyani prepared and deposited 10,00,000 purported to be fake and fictitious shares of DSQ sof tware limited worth about Rs.13,00,00,000/- belonging to a Delhi based company named New Vision Investment Private Limited with the Calcutta Stock Exchange as security against dues of Biyani Securities Private Limited and Harish Chandra Biyani.

5. It is stated that the writ petition is not maintainable since the petitioner has not exhausted the alternative remedies available to him under the statute, before the Courts having jurisdiction, namely, the High Court of Judicature at C alcutta. The petitioner should have filed this quash petition invoking the inherent powers of the High Court at Calcutta under section 482 of the Criminal Procedure Code. There is a direct and clinching evidence linking the petitioner to the crime. In such a circumstance, it is very essential that the writ petitioner should be arrested and interrogated. The very same deponent has filed a separate counter affidavit with similar averments in respect of FIR bearing No.300 dated 23-9-2001.

6. Heard Mr. M. Ravindran, learned senior counsel for the petitioner and Mr. R. Shanmughasundaram, learned senior counsel for respondents 1 to 3.

7. Mr. M. Ravindran, after taking me through both the FIRs., other

materials such as Annual report of DSQ Software Limited in the last 3 years, would contend that both the FIRs., do not disclose any case against the petitioner; accordingly they are liable to be quashed. He also contended that there is no nexus between the petitioner and other accused and the petitioner is in no way connected with the alleged scam. He further contended that part of cause of action arose within the jurisdi ction of this Court; accordingly, both the writ petitions are maintainable and this court can very well quash the FIRs., which do not disclose any case against the petitioner. On the other hand, Mr. R. Shanmughasundaram, learned senior counsel for the r espondents, would contend that this Court lacks territorial jurisdiction to quash both the F.I.Rs., filed by the Detective Department of Kolkata. According to him, the cause of action had wholly arisen within the City of Kolkata, where the Calcutta Stoc k Exchange Office is situated. Even on merits, in the light of the conspiracy by the petitioner and other accused by indulging in circular trading, they cheated Calcutta Stock Exchange Association and its investors, etc., to the tune of Rs.120 crores. H e further contended that a Joint Parliamentary Committee which conducted a full enquiry, submitted a report which shows that the petitioner is criminally liable for his wrongful doings culminating in a Nation wide security scam having serious impact on t he economy of the country. Even otherwise, according to him, as the matter is still under thorough investigation, absolutely there is no ground for interference.

8. I have carefully considered the rival submissions.

9. First I shall consider the objection regarding jurisdiction to grant the relief of quashing the F.I.Rs., No.476 dated 24-9-2002 and 300 dated 23-9-2002 on the file of the Sub Inspector of Police, Detective Department, Kolkata. Mr. M. Ra vindran, learned senior counsel for the petitioner, by pointing out that since the company of the petitioner, namely, DSQ Software was registered at Madras, and the order of cancellation by the Securities Exchange Board of India (in short "SEBI") was com municated to the company, namely, DSQ Software at Chennai, part of cause of action arose at Chennai though the F.I.Rs., have been lodged at Kolkata. In the light of the above contention and in view of the fact that the jurisdictional issue is the main a spect to be considered in these writ petitions, at the foremost, I have carefully perused the petition dated 21-8-2001 filed under Section 156 (3) of the Code of Criminal Procedure and the complaint dated 9-9-2002 filed by the Calcutta Stock Exchange bef ore the second respondent as well as the relevant extracts from the Report of the Joint Parliamentary Committee. A careful scrutiny of the above materials would clearly show that though the registered office of the petitioner's company namely DSQ Softwa re Limited is at Chennai, prima facie I am satisfied that no part of cause of action had arisen at Chennai, within the jurisdiction of this Court. F.I.R. No.476 dated 24-9-2002 had been registered on the complaint given by one Prasun Kumar Ray, Secretary of the Calcutta Stock Exchange Association on 24-9-2002 for the alleged offences under Sections 120 (B), 420, 409, 467, 468, 471, 477-A I.P.C., whereas F.I.R. No.300 had been registered on the complaint given by one Arup Sankar Bagchi, Senior Manager of the Stock Holding Corporation of India Limited on 23-9-2001 for the offences under Sections 120 (B), 420, 409, 385 and 511 I.P.C. These cases were registered under the direction of the Courts under Section 156 (3)

of the Code of Criminal Procedure. I n the earlier part of my order, I have referred to the brief facts of both the cases, the allegation against and the involvement of the petitioner in the conspiracy to cheat the Stock Exchange, its investors as well as the common members of public. The complaints also disclosed details regarding misappropriation and the wrongful gain by the accused alleged therein and the wrongful loss to the Calcutta Stock Exchange. The documents/materials placed by the respondents show that the petitioner in conspir acy with the other accused, by indulging in circular trading, artificially inflated the price of the shares of the DSQ Software Limited, DSQ Industries and the shares of some other companies, cheated gullible small time investors of their hard earned mon ey and also cheated the Calcutta Stock Exchange Association to the tune of Rs.120 crores by deliberately making default in payment for the shares purchased by them in circular trading. Mr. R. Shanmughasundaram, learned senior counsel for the respondents , has also brought to my notice constitution of Joint Parliamentary Committee, its full enquiry report etc. He also took me through the relevant extracts from the report which show that the petitioner is criminally liable for his wrongful doings culmina ting in a national wide security scam affecting the economy of our country. The materials placed before me clearly show that the cause of action had wholly arisen within the City limits of Kolkata where the Calcutta Stock Exchange Association and the st ock Holding Corporation of India Limited, Calcutta, the complainants in these cases are situated. Merely because a communication had been addressed to the registered office of the petitioner at DSQ Software at Chennai, it cannot be stated that part of c ause of action had arisen within the jurisdiction of this Court.

10. Mr. M. Ravindran, learned senior counsel for the petitioner, very much relied on a decision of the apex Court in Navinchandra N. Majithia v. State of Maharashtra, reported in (2000) 7 Supreme Court Cases 640. By pointing out the facts in that case and the ultimate conclusion arrived at therein, he would contend that since part of cause of action arose at Chennai, this Court has jurisdiction to go into both the F.I.Rs. After going through the facts of that case and the ultimate decisi on arrived at therein, I am of the view that the said decision is not helpful to the petitioner's case. In para 17, 18, 22 and 24, their Lordships have observed that,

"17. From the provision in clause (2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territor ial jurisdiction of that Court.

18. In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal a group of operative facts giving rise to one or more base s for suing; a factual situation that entitles one person, to obtain a remedy in court from another person. (Black's Law Dictionary)

22. So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed.

24. This Court held (at SCC p.517, para 11) that under Section 177 of the Criminal Procedure Code "every offence shall ordinarily be inquired into and tried in a court within whose jurisdiction it was committed".

No doubt, in the same paragraph, Their Lordships have held that the locality where the bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. The learned senior counsel for the petitio ner has pressed into service the following statement made in para 26:

"26. In case of H.V. Jayaram v. Industrial Credit and Investment Corporation of India Ltd., [(2000) 2 SCC 202] this Court considered the question where the offence under section 113 (2) of the Companies Act, 1956 is completed. Taking note of Section 113 and Section 207 of the said Act this Court held, inter alia, that the cause of action for default of not sending the share certificates within the stipulated time would arise at the place where the registered office of the company is situate d as from that place the share certificates can be posted and are usually posted."

After analysing the various provisions of the Code of Criminal Procedure, the contents of the F.I.R therein, and after holding that the Division Bench of Bombay High Court based its decision on the sole consideration that the complainant had filed the co mplaint at Shillong in the State of Meghalaya, that the High Court did not consider the alternative prayer made in the writ petition to transfer the investigation to Mumbai police, and that the High Court also did not take note of the averments in the wr it petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurise the petitioners to reverse the transaction for transfer of shares, Their Lordships in the above decision arrived at a conclu sion that "On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court." In the cas es on hand, I have referred to the complaints under Section 156 (3) Cr.P.C., the contents of both the F.I.Rs., the report of the Joint Parliamentary Committee and its finding etc. These particulars do not show that any cause of action much less part of cause of action arose within the jurisdiction of this Court. I have already referred to the observation of Their Lordships in the above decision, namely, in so far the question of territorial jurisdiction with reference to the criminal offence is concer ned, the main factor to be considered is the place where the alleged offence was committed. Further, in the above decision the Supreme Court has observed that the Bombay High Court did not consider the alternative prayer for transfer of investigation fr om the State of Meghalaya to Mumbai. There is also allegation regarding mala fide move on the part of the complainant to harass and pressurise the petitioners to reverse the transaction for transfer of shares, and according to the Supreme Court, the sam e was not considered by the Bombay High Court. Further, a large number of events had taken place at Bombay in respect of the allegations contained in the F.I.R. registered at Shillong. In those circumstances and in the light of the specific averments in the affidavit filed in support of the said writ petition, the Supreme Court came to the conclusion that part of cause of

action arose at Bombay, and that the Bombay High Court has jurisdiction to consider the issue raised. That is not the position here and there is no malafide move on the part of the complainants to harass and pressurise the petitioner herein; accordingly the said decision is not helpful to the cases on hand. For the same reasons, I am of the view that the other decisions, namely, UN ION OF INDIA v. ADANI EXPORTS LTD. [(2002) Supreme Court Cases 567] also is not helpful to the petitioner's case. All other decisions referred to by the learned senior counsel for the petitioners, namely, (1) R.P. KAPUR v. STATE OF PUNJAB [AIR 1960 Supr eme Court 866]; (2) MADHAVRAO v. SAMBHAJIRAO [AIR 1988 Supreme Court 709] (3) SUNIL KUMAR v. M/s. ESCORTS YAMAHA MOTORS LTD., [200 Crl.L.J.174); (4) HRIDAYA RANJAN PD. VERMA v. STATE OF BIHAR [2000 Cr.L.J. 2983]; (5) PEPSI FOODS LTD. V. SPECIAL JUDICIAL MAGISTRATE [(1998) 5 Supreme Court Cases 749]; (6) ASHOK CHATURVEDI v. SHITUL H. CHANCHANI [(1998) 7 Supreme Court cases 698] relate to inherent power of this Court under Section 482 Cr.P.C., Articles 226 and 227 of the Constitution of India. In the li ght of my conclusion that this Court has no territorial jurisdiction to go into the merits of the claim made by the petitioner, I am of the view that it is unnecessary for this Court to consider the same. Mr. R. Shanmughasundaram, learned senior counsel for the respondents, by pointing out a decision of the Supreme Court in STATE OF BIHAR v. J.A.G. SALDANIA, reported in 1980 Supreme Court Cases (Cri) 272 (para 28), would contend that this Court is not justified in issuing any direction before the inves tigation is complete. It is settled law that the High Court in exercise of the extraordinary jurisdiction under Article 226 of the Constitution cannot issue any positive direction by way of Mandamus before the investigation in these cases is complete, a nd if any direction is issued, it will certainly affect the smooth flowing of investigation. Here again, in the light of my earlier conclusion, it is also unnecessary to refer the same. `

11. The learned senior counsel for the respondents, has also brought to my notice certain orders passed in Criminal O.Ps., filed by the petitioner and another accused A.K. Sharma. The petitioner in Crl.O.P.No. 24025/2002 dated 26-9-2002 wa s granted interim anticipatory bail on fulfilling certain conditions. The conditions are that the grant of interim anticipatory bail is valid for a period of 8 weeks, that the petitioner shall report before the Commissioner of Police, Egmore, Chennai-8/ second respondent once in 15 days at 10 A.M., that the petitioner shall make himself available for interrogation as and when required by the second respondent, that the petitioner shall surrender before the said court within 10 days from the date of rece ipt of copy of the order, failing which the interim anticipatory bill granted to him shall automatically cancelled. The further condition in clause (d) which is relevant reads as follows:
"(d) In the meantime, the petitioner shall surrender before the court having jurisdiction and seek appropriate relief". (Emphasis supplied)

Same condition was imposed by this Court in another Crl.O.P., viz., Crl.O.P.No.26004/2002 dated 17-10-2002. There also the petitioner was directed to surrender before the Court having jurisdiction and seek appropriate relief. Identical orders were also passed in Crl.O.P.No. 28657/2002 dated 20-11-2002 and in Crl.O.P.No.29330/2002 dated 10-12-2002. The last condition namely that petitioner has to surrender before the Court

having jurisdiction would show that the petitioner himself was aware of the fac t that this Court lacks jurisdiction and therefore he (petitioner) was asked to surrender before the Court having jurisdiction. The above aspect supports the stand taken by the respondents.

12. Mr. R. Shanmughasundaram, learned senior counsel for the respondents, has also brought to my notice an order passed by a Division Bench of the Bombay High Court in Crl.Writ Petition No. 1712 of 2002 dated 19-12-2002 (KETAN VINAYCHANDRA PA REKH v. STATE OF WEST BENGAL). The petitioner in that case, namely, Ketan Vinaychandra Parekh, is the first accused in F.I.R.No.476/2002 on the file of the Sub Inspector of Police, Detective Department, Central Kolkata. The learned senior counsel very much relied on the following observation of the Division Bench:

"para 2. Admittedly Calcutta police are investigating the crime. This petition filed under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure to quash the said FIR and a declaration that the bail order dated 3-12-2002 passed by the Court of Addl. Chief Metropolitan Magistrate, 3rd Court, Mumbai in Misc. Application No. 72/Misc/2002 is not an interim order and the same will continue to remain permanently unless the bail is cancelled by a competen t court.

Para 3. So far as first prayer is concerned, even assuming, we have the jurisdiction to entertain this petition, in the facts of this case, we cannot consider the prayer of the petitioner as the complaint is lodged in Calcutta; the Calcutta police are investigating the crime and the court of Addl. Chief Metropolitan Magistrate, Calcutta has issued a non-bailable warrant. The petitioner will have to approach the appropriate Court, if he is so advised."

The said conclusion also supports the claim of the respondents.

13. Though the learned senior counsel for the petitioner vehemently contended that the petitioner has no role in the alleged scam and both the F.I.Rs., have to be quashed, in view of my conclusion that this Court lacks territorial jurisdic tion to consider the relief of quashing the F.I.Rs., and of the fact that the senior counsel invited me to consider the merits of the case, I am inclined to refer only one passage-para 4.130 from the Joint Parliamentary committee Report:

"4.130 Investigation taken up by special cell (G.S) of Detective Department, Calcutta Police has indicated that Shri B.V. Gaud, the then Managing Director, SHCIL had dishonestly by and fraudulently allowed "Sell-N-Cash" and "Cash-on-Payout" sc hemes to be misused by the promoter of DSQ Group of Industries namely Shri Dinesh Dalmia and his associate broker all having close acquaintance for their wrongful gain by way of circular and inside trading among the accused brokers, promoters and their a ssociates."

I have already referred to the composition of the Joint Committee consisting of 20 Members from Lak Sabha, 10 Members from Raja Sabha and 3 Officials of Government of India and the Committee examined all the persons connected with the scam. It is furthe r seen that the committee took evidence of two

Ministers, two Ex-Ministers, regulatory agencies-SEBI, RBI and DCA, Investigative agencies-CBI, CBDT and Directorate of Enforcement, Ministries/Departments of Government of India, Banks including Cooperative Banks, Financial Institutions-IDBI and ICICI, Presidents and Executive Directors of selected Stock Exchanges, SHCIL and other individuals. In such circumstances, the above conclusion (para 4.130) of the Joint Parliamentary Committee, cannot be ignored lightly. All these events and allegations have to be fully investigated by the concerned agency. Accordingly, at this stage, it would not be proper either to stall or interfere with the investigation.

14. In the light of what is stated above, both the Writ Petitions are liable to be dismissed; accordingly dismissed. No costs. Consequently, all the connected W.P.M.Ps., and W.V.M.Ps., are closed.

28-03-2003
R.B.
Index:- Yes
Internet:- Yes

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